

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Access One, Inc.; ACN Communications)
Services, Inc.; Ascendtel, LLC; AT&T)
Communications of Illinois, Inc.;)
Broadview Networks, Inc.; BullsEye Telecom,)
Inc.; Cbeyond Communications, LLC; US)
Xchange of Illinois, LLC, d/b/a Choice One)
Communications; CIMCO Communications,)
Inc.; CityNet Illinois, LLC; DSLnet)
Communications, LLC; First Communications,)
LLC; Forte Communications, Inc.;)
Globalcom, Inc.; ICG Telecom Group, Inc.;)
King City Telephone, LLC, d/b/a Southern)
Illinois Communications; KMC Telecom V,)
Inc.; Looking Glass Networks, Inc.;)
McLeodUSA Telecommunications Services,)
Inc.; Mpower Communications Corporation,)
d/b/a Mpower Communications of Illinois;)
Neutral Tandem-Illinois, LLC; New Edge)
Network, Inc.; nii communications, Ltd.;)
Novacon Holdings LLC; Nuvox)
Communications of Illinois, Inc.; OnFiber)
Carrier Services, Inc.; RCN Telecom Services of)
Illinois, LLC; TCG Chicago; TCG Illinois; TDS)
Metrocom, LLC; and Trinsic)
Communications, Inc.)
)
Petition for Arbitration Pursuant to)
Section 252(b) of the Telecommunications Act of)
1996 with Illinois Bell Telephone Company d/b/a)
SBC Illinois to Amend Existing Interconnection)
Agreements to Incorporate The *Triennial Review*)
Order And the *Triennial Review Remand Order*)

Docket No. 05-0442

DIRECT TESTIMONY OF KIERAN F. ATHY

CLEC EXHIBIT 1 - Addressing Issues 22, 24 and 34

August 4, 2005

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ISSUE 22.....	2
III.	ISSUE 24.....	4
IV.	ISSUE 34.....	8

1 INTRODUCTION :
2
3

4 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**
5

6 A: My name is Kieran Athy. My business address 1901 South Meyers Road,
7 Oakbrook Terrace, IL 60181.
8

9 **Q. PLEASE DESCRIBE YOUR EDUCATION AND EMPLOYMENT.**
10

11 A: I have a Bachelor's Degree in Electrical Engineering from the University of
12 Illinois at Chicago, a Master's Degree in Electrical/Computer Engineering from
13 Illinois Institute of Technology, and a Master's of Management Degree
14 (Marketing, Strategy, and Management) from the Kellogg Graduate School of
15 Management at Northwestern University.

16 I have 17 years of experience in the telecommunications industry, having
17 worked at AT&T Network Systems/Lucent Technologies, Allegiance Telecom,
18 and currently CIMCO Communications, Inc., where I am Vice President of
19 Engineering and Operations. I have direct knowledge and experience in sales,
20 marketing, strategy, auditing, product development, provisioning, customer care,
21 engineering, planning, and operations.

22
23 **Q. PLEASE STATE THE PURPOSE OF YOUR DIRECT TESTIMONY.**
24

25 A. The purpose of my direct testimony is to present and explain the CLECs'
26 position with regard to Issues 22, 24 and 34.
27

Issue 22

Section 4.2: At what point should billing for cross-connects that are associated with a Section 251 high capacity loop, transport or dark fiber UNE that is being converted, be converted to applicable wholesale rates?

The competing language for Section 4.2 is as follows:

4.2 The provisions of Section 3.2.2, 3.2.2.1, 3.2.2.2 and 3.2.2.3 shall apply to the transition of DS1/DS3 Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements impacted by wire center designation(s). Requested transitions of DS1/DS3 Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements shall be performed in a manner that reasonably minimizes the disruption or degradation to CLECs' customer's service, and all applicable charges shall apply. **As of the date of conversion of such DS1/DS3 Loops, DS1/DS3 Dedicated Transport, or Dark Fiber Transport** Cross-connects provided by SBC in conjunction with such Loops and/or Transport shall be billed at applicable wholesale rates (i.e. if conversion is to an access product, they will be charged at applicable access rates). Cross-connects that are not associated with such transitioned DS1/DS3 High-Capacity Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport arrangements shall not be re-priced.

Q. HAVE CLECS PROPOSED LANGUAGE SPECIFYING WHEN SBC CAN BEGIN BILLING FOR CROSS-CONNECTS AT WHOLESALE RATES ?

A. Yes, the CLECs' proposed language states that SBC can begin to bill for cross connects at wholesale rates at the time the related loop or transport UNEs are converted to a wholesale service.

Q. DO THE PARTIES DISPUTE THE POINT IN TIME AT WHICH SBC CAN BEGIN CHARGING FOR CROSS-CONNECTS AT THE APPLICABLE WHOLESALE RATES?

65 A. No. It is my understanding that the Parties are in agreement that CLECs
66 should be billed for cross-connects at wholesale rates commencing on the date
67 of the conversion of the DS1/DS3 Loops, DS1/DS3 Dedicated Transport, or Dark
68 Fiber Transport from UNEs to wholesale services. The CLECs' proposed
69 language simply makes this understanding explicit. This will ensure that there
70 will be no retroactive application of the wholesale rates. It is SBC's standard
71 practice for billing to issue a bill once an Access Service Request / Local
72 Service Request ("ASR/LSR") has been completed, turned over, and accepted
73 by the requesting carrier. The language SBC uses does not indicate when the
74 wholesale charges will begin to be assessed. In fact, the sentence that precedes
75 the CLECs' proposed language simply states "Requested transition of DS1/DS3
76 Loops, DS1/DS3 Dedicated Transport or Dark Fiber Dedicated Transport
77 arrangements shall be performed in a manner that reasonably minimizes
78 disruption or degradation to CLEC's customer service, and all applicable charges
79 shall apply." Because requested transitions of DS1/DS3 loops, DS1/DS3
80 dedicated transport, and Dark Fiber arrangements would be initiated via an
81 ASR/LSR, there is the potential that SBC may charge the CLEC upon the date of
82 its request for the cross-connect. The CLECs' proposed language simply states
83 the parties' understanding of when the wholesale rates will apply: the date of the
84 conversion of the unbundled network elements to wholesale service.

85
86
87
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Issue 24:

Section 4.7 – (a) Should the Amendment address what termination charges apply if a wire center is determined to be non-impaired for Section 251 DS1/DS3 UNE loops, and a CLEC therefore determines that it no longer needs transport or collocation facilities purchased under SBC's tariff? (b) If so, what termination charges should apply to the cancellation of the tariffed transport or collocation facilities

The CLEC proposed language for Section 4.7 is as follows:

4.7. If a wire center is determined to be non-impaired for DS1/DS3 Loops, the CLEC may disconnect SBC transport or collocation facilities not governed by the underlying Agreement, but purchased under tariff. If CLEC was taking the transport or collocation arrangement pursuant to a term commitment, CLEC shall pay a termination charge, as provided in SBC's FCC special access tariff, equal to the dollar difference between the current rate for the term that CLEC could have completed during the time the service was actually in service, or the monthly rate for service in place less than 12 months, and the customer's current rate for each month the service was provided.

SBC's position is that there should be no language in the amendment on this topic.

Q. WHAT IS THE POINT OF THE CLECS' PROPOSED LANGUAGE?

A. The point of the CLECs' proposed language is that if a wire center becomes impaired and the CLEC can no longer maintain Section 251 UNE loops at that wire center, the CLEC may no longer have a need for associated facilities that it has purchased from SBC at wholesale at that wire center. The CLEC should be allowed to terminate the wholesale services consistent with terminating the UNEs, and only pay the termination charge specified in SBC's special access tariff. It is the CLECs' understanding that our proposed language accurately describes the termination charge methodology in the applicable SBC tariffs.

Q. WHY IS THIS LANGUAGE DISPUTED?

128
129 A. The CLECs are unclear as to what SBC is disputing. SBC did not contend
130 in negotiations that the CLEC language did not accurately describe the
131 termination charges in its FCC special access tariff.

132
133 **Q. WHEN WOULD A CLEC DETERMINE THAT DUE TO A NEW FINDING**
134 **THAT A WIRE CENTER IS NON-IMPAIRED WITH RESPECT TO SECTION**
135 **251 DS1/DS3 UNE LOOPS, IT CAN NO LONGER VIABLY MAINTAIN THE**
136 **CONTINUED USE OF TRANSPORT OR COLLOCATION FACILITIES**
137 **PURCHASED UNDER TARIFF?**

138 A. A likely scenario would be for a CLEC to have purchased services under
139 tariff to be collocated at an SBC central office that is subsequently deemed non-
140 impaired for DS1/DS3 transport. In that case, the CLEC may have purchased
141 transport facilities under the terms and conditions in a tariff while continuing to
142 purchase UNE DS1 loops. In the event that the central office becomes non-
143 impaired for DS1/DS3 loops, the necessity for collocation and the tariffed
144 transport becomes obsolete. The CLEC should be allowed to terminate the tariff
145 contract and pay only the termination charge specified in the FCC tariff, as
146 described in CLECs' language, due to the fact that a transition of the services will
147 be required (i.e. UNE loops must be transitioned to tariff).

148
149 **Q. CAN YOU EXPLAIN HOW THIS AFFECTS CIMCO?**

150 A. Yes. For example, if CIMCO had previously purchased tariffed transport
151 to a location that was not impaired but where the loops were impaired, it would

152 have purchased such transport as a UNE. However, due to the hypothetical
153 newly imposed non-impairment finding on loops, CIMCO will have to make
154 arrangements for continued service to the customer, while recognizing the non-
155 impairment of loops. This will leave CIMCO in the position of finding that certain
156 CIMCO facilities are without sufficient capital support or cash flow to continue
157 providing service at those locations.

158
159 **Q. HAS CIMCO TAKEN STEPS TO AVOID UNECONOMIC OR STRANDED**
160 **CAPITAL ASSET OR INFRASTRUCTURE WHERE IT IS FORESEEABLE**
161 **THAT THE FACILITIES MAY BECOME ECONOMICALLY NON-VIABLE?**

162 A. Yes, CIMCO purposefully avoided deployment in certain busy central
163 office locations where we anticipate circumstances may be changed to render
164 the location non impaired. Franklin Street is one such central office where we
165 have tried to avoid collocating new facilities for loops and transport.

166
167 **Q. CAN A CLEC ALWAYS PREDICT WITH CLARITY THE DEGREE OF**
168 **CHANGE IN HOW CENTRAL OFFICE OR ROUTES LOCATIONS WILL BE**
169 **ESTABLISHED AS IMPAIRED OR NON IMPAIRED?**

170 A. Absolutely not, although adoption of the CLECs' proposal for Issue 23,
171 discussed by CLEC witness Mr. Pitterle, would help in that regard

172
173 **Q. SHOULD THE AMENDMENT ADDRESS WHAT TERMINATION**
174 **CHARGES APPLY IF A WIRE CENTER IS DETERMINED TO BE NON-**
175 **IMPAIRED FOR SECTION 251 DS1/DS3 UNE LOOPS, AND A CLEC**

176 **THEREFORE DETERMINES THAT IT NO LONGER NEEDS TRANSPORT OR**
177 **COLLOCATION FACILITIES PURCHASED UNDER SBC'S TARIFF?**

178
179 A. Yes, they need to be clearly defined just as they are in SBC's own tariffs

180
181 **Q. WHAT TERMINATION CHARGES SHOULD APPLY TO THE**
182 **CANCELLATION OF THE TARIFFED TRANSPORT OR COLLOCATION**
183 **FACILITIES IN THIS INSTANCE?**

184 A. The CLEC should be allowed to pay a termination charge that is equal to
185 the dollar difference between the current rate for the term that the CLEC could
186 have completed during the time the service was actually in service, or the
187 monthly rate for service in place less than 12 months, and the current rate for
188 each month the service was provided. Again, this is what is provided for in
189 SBC's FCC special access tariff. Below is termination liability language from that
190 tariff:

191 7.4.10 Optional Payment Plan (OPP) for Ameritech Base Rate, DS1, DS3,
192 OC-3, OC-12, OC-48 Services, TV Analog Video Services, Digital Video
193 Service, Ameritech Super trunking Video Services, Ameritech
194 Multichannel Video Service, SONET Express Services, Wideband Analog
195 Video Service and Serial Component Video Service

196
197 (C) OPP Termination Liabilities

198
199 Customers requesting termination of service prior to the expiration date of
200 the OPP term will be liable for a termination charge. The termination
201 charge for all OPP terms, except for Ameritech Base Rate OPP terms
202 subscribed to after October 8, 1997, Ameritech DS1 and Ameritech DS3
203 OPP terms subscribed to after February 20, 1997 and Ameritech DS3
204 Service Packages with an Optical Interface (see 7.4.10 C(i)), will be
205 calculated as follows: The dollar difference between the current OPP rate
206 for the OPP term that could have been completed during the time the
207 service was actually in service, or the monthly rate for services in place

less than 12 months, and the customer's current OPP rate for each month the service was provided. For example, a customer subscribed to a 60 month OPP term and disconnected service during the 37th month. This customer's termination charge would be: [36 month OPP Rate - 60 month OPP rate] x 37 = Termination Charge. The 36 month OPP term could have been completed during the months the service was actually in service. All recurring rate termination charges will be based on the recurring OPP rates in effect at the time of termination.

Issue 34:

Section 11.2.4 IDLC – Where CLEC has requested access to a loop to a customer premises that SBC serves with an IDLC Hybrid Loop, under what conditions can SBC impose non-recurring charges other than standard loop order charges and, if applicable, charges for routine network modifications?

The competing language for Section 11.2.4 is as follows:

*11.2.4 IDLC Hybrid Loops. Where CLEC requests a **an unbundled** loop to a premises to which SBC has deployed an IDLC Hybrid Loop, SBC must provide CLEC a technically feasible method of unbundled access. SBC may not impose special construction or other non-standard charges (which does not include routine network modification charges permitted under Section 8.1.5 of this Attachment) to provision unbundled loops where it has deployed IDLC except **as provided under this Agreement. when it would not be technically feasible to provision the requested loop using any of the following options: (1) the use of a spare copper loop (whether terminated or not), (2) by SBC changing or replacing line cards or multiplexing equipment; (3) by SBC performing a line station transfer; or (4) by SBC providing access to the IDLC Loop. This list of options is not intended to be an exhaustive list. To the extent that SBC or CLEC is able to identify other means of unbundling IDLC or accessing an unbundled loop served via IDLC using comparable IDLC equipment in another market, SBC shall be required to unbundle the IDLC using the same solution without additional charges to CLEC. Access to the IDLC loop shall be deemed technically feasible if such access can be accomplished via any of the methods described in footnote 855 of the TRO.***

251 **Q. DOES SBC ASSUME THERE ARE IMPEDIMENTS IN PROVISIONING**
252 **LOOPS BECAUSE OF THE PRESENCE OF IDLC?**

253

254 A. Yes. However, SBC is not clear regarding why it would not provide loops
255 when IDLC is present and further it has not attempted to specify what additional
256 charges it may seek to impose for IDLC access. Given my experience in the
257 industry, it is my opinion that SBC's position is inappropriate.

258

259 **Q. WHAT IS YOUR PRIMARY CONCERN?**

260 A. Basically, SBC should not impose extra non-recurring charges for new
261 loop construction under an unsubstantiated assumption that it is not technically
262 feasible to fulfill a new UNE request using existing loops.

263

264 **Q. IS SBC REQUIRED TO PROVIDE ACCESS TO UNBUNDLED HYBRID**
265 **LOOPS?**

266 A. Yes. The FCC indicates that ILECs must provide unbundled Hybrid Loops
267 where it has deployed Integrated Digital Loop Carrier (IDLC) systems. The FCC
268 "recognize[d] that providing unbundled access to hybrid loops served by a
269 particular type of DLC system, e.g., Integrated DLC systems, may require
270 incumbent LECs to implement policies, practices, and procedures different from
271 those used to provide access to loops served by Universal DLC systems." The
272 industry and the FCC are well aware of the technical attributes between different

273 DLC systems.¹ Nonetheless, the FCC explicitly held that, “Even still, we require
274 incumbent LECs to provide requesting carriers access to a transmission path
275 over hybrid loops served by Integrated DLC systems.”²

276
277 **Q. DOES THE CLECS’ PROPOSAL MANDATE A PARTICULAR**
278 **TECHNICAL IMPLEMENTATION METHODOLOGY?**

279 A. No. The CLEC proposal does not require any particular form of access
280 where IDLC loops are present. Rather, SBC is free to use its discretion to
281 choose a form of access. The CLECs’ proposal would only ensure that SBC
282 could not charge extra for special construction when it would be technically
283 feasible for SBC to provide unbundled access to a loop without such
284 construction.

285 From a technical perspective, the FCC indicates that in most cases, the
286 ILEC would be able to provide unbundled access using a spare copper loop or
287 through a reconfiguration of the DLC into a UDLC architecture (SBC agrees that
288 UDLC is readily amenable to unbundling).³ Nonetheless, the *TRO*, makes clear
289 that “if neither of these options is available, incumbent LECs must present
290 requesting carriers a technically feasible method of unbundled access.”⁴

¹ *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147 (rel. Aug. 21, 2003) at ¶297 (“*Triennial Review Order*” or “*TRO*”).

² Id.

³ Id.

⁴ Id.

291

292 **Q. HAS THE FCC ADDRESSED THE METHODOLOGIES FOR**
293 **PROVISIONING LOOPS UNDER VARIOUS DLC SYSTEMS?**

294

295 A. Yes. The FCC has described in some detail the technical situations where
296 no impediments exist in the provisioning of customer loops over IDLC.⁵ When
297 these options are available, SBC should not attempt to impose additional
298 charges, like special construction or other nonstandard charges.

299 As the FCC noted, incumbent LECs can provide IDLC fed hybrid loops on
300 an unbundled basis. Thus, there is no reason that ILECs should argue that
301 additional non-recurring charges should apply just because a CLEC requests
302 access to a customer that SBC serves via an IDLC Hybrid loop. The types of
303 options the FCC detailed as methods which ensure effective provisioning of such
304 loops include: Configuring existing equipment, adding new equipment, or both,
305 such as providing a UNE loop over the IDLC system through the use of a
306 “hairpin” solution; recognizing that some IDLC systems can simulate UDLC
307 systems or can operate in UDLC mode; and when “SBC typically uses a cross
308 connect in its network to establish the connection between the feeder loop plant
309 and its circuit and packet switches”⁶

310

311 **Q. IN YOUR EXPERIENCE, IS IT COMMON FOR SBC TO PROVIDE**
312 **LOOPS OVER FACILITIES WITH IDLC?**

⁵ Id.

⁶ Id. at fn. 855.

313 A. Yes. For instance, CIMCO has on numerous occasions placed orders for
314 customer loops and was informed that because of IDLC impediments, SBC could
315 not fulfill the requested ASR. SBC would simply return the order indicating that
316 no facilities were available. However, because the circumstances demanded
317 some form of action to complete the order request, CIMCO immediately ordered
318 special access under the FCC tariff, for the same customer, at the same location.
319 Further, CIMCO was forced to agree to pay an expedite fee in order to ensure
320 that SBC would timely place the requested facility. In this situation, SBC filled
321 the order without delay or interference, despite its previous stance that the same
322 loop facility was unavailable.

323

324 **Q. WHAT DO YOU CONCLUDE FROM YOUR EXPERIENCE WITH THESE**
325 **TYPES OF LOOP ORDER SITUATIONS?**

326 A. It appears to me that SBC had loop facilities available and simply chose to
327 not make them available to CIMCO without additional charges.

328

329 **Q. HAS THE ICC ADDRESSED IDLC ISSUES BEFORE?**

330 A. Yes, in a recent ICC arbitration between MCI and SBC (Docket 04-0469),
331 the Commission correctly decided that SBC is required to continue to provide
332 loops served over IDLC.

333

334 **Q. WHAT SHOULD THE ICC CONCLUDE IN THIS ARBITRATION?**

335 A. The ICC should determine, consistent with its prior decision in the MCI
336 arbitration case, that loops can be and should continue to be provided in
337 situations where IDLC is present. This comports with the FCC's holding in the
338 *TRO* which required the ILEC "to provide requesting carriers access to a
339 transmission path over hybrid loops served by Integrated DLC systems⁷."

340

341 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

342 A. Yes, it does.

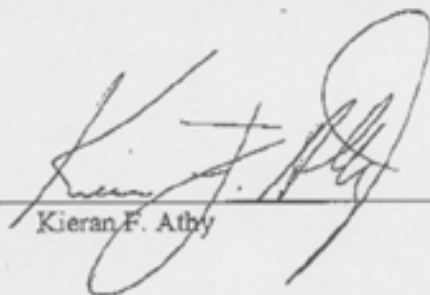
⁷ Id. at 177

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VERIFICATION

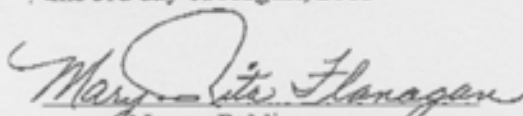
Kieran F. Athy, on oath, states that he is Vice President, Engineering and Operations, for CIMCO Communications, Inc; that he is familiar with the foregoing "Direct Testimony of Kieran F. Athy" in ICC Docket No. 05-0442 and knows the contents thereof; and that the matters set forth in the "Direct Testimony of Kieran F. Athy" are true and correct to the best of his knowledge, information and belief.





Kieran F. Athy

Subscribed and sworn to before me
this 3rd day of August, 2005



Notary Public